

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FAIRVIEW HEALTH OF GREENWICH

and

Case 01-CA-182111

CAREEN JARRETT

ORDER

The Employer's petition to revoke subpoena duces tecum B-1-UHJYUV is denied. The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.¹ Further, the

¹ In reviewing the petition to revoke, we note the Region's representation in its opposition brief that, to the extent that any documents responsive to the subpoena requests contain confidential medical information protected by the Health Insurance Portability and Accountability Act (HIPAA), the Region is willing to work with the Employer to limit the disclosure of such information. Contrary to our dissenting colleagues' assumption, the Region's aforementioned representation does not establish that the subpoena initially was overbroad, and we find that it was not. Instead of identifying assertedly privileged, confidential, or otherwise protected information in a privilege log, as the subpoena instructs, the Employer generally argues that some documents may be subject to HIPAA protection. In this context, the Region's representation in response to the Employer's claims merely serves to promote efficiency and provide greater clarity to the parties.

Additionally, in response to our dissenting colleagues' position that he would revoke subpoena paragraph 1, we disagree, and find that this request is, in fact, relevant to the specific alleged violations articulated in the unfair labor practice charge. As the Region has explained, the documents requested are necessary due to the Employer's refusal to voluntarily provide evidence as to why the Charging Party was removed from her job or disciplined. See Counsel for the Regional Director's Opposition at 10. Thus, as in *Allied Waste Services of Massachusetts, LLC*, Cases 01-CA-123082, -126843 (Dec. 31, 2014), the requested documents are arguably relevant to the ultimate merits of the charge.

Acting Chairman Miscimarra would grant the Employer's petition to revoke as to subpoena requests (in paragraphs 3, 4, 5, 6, and 8) that the Employer notes were broad enough to encompass medical information of residents, which may be protected by HIPAA. In its brief opposing the petition to revoke, the Region states, "the Subpoena

Employer has failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., April 6, 2017

PHILIP A. MISCIMARRA,	ACTING CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

does not directly seek such information . . . to the extent that such documents are responsive to the Subpoena, Counsel for the Regional Director, without waiving its right to ultimately seek such documents if necessary, is presently willing to work with the Employer to limit the disclosure of any unnecessary HIPAA-related information at this time.” Acting Chairman Miscimarra disagrees with the Board’s practice, followed here by his colleagues, that often permits an overly broad subpoena request to be “clarified” by the Region after a party has filed a meritorious petition to revoke, which then prompts the Board to deny the petition. See *Gargiulo Produce*, Case 22-CA-177431 (March 8, 2017). Acting Chairman Miscimarra would grant the Employer’s petition to revoke without prejudice to the Region’s right to issue new or amended subpoena requests that are narrower in scope.

Acting Chairman Miscimarra would also grant the petition to revoke as to paragraph 1 (requesting “[f]or the period of January 1, 2015 to the present, those documents which set forth all rules, regulations and policies in effect at Fairview Health of Greenwich . . . including but not limited to: policies and procedures manuals, employee manuals, work rules and standards for employee behavior, personnel and nursing policies, and rules governing in-servicing of employees”) except for those rules, regulations and policies that reasonably relate to the charge allegations. See *Allied Waste Services of Massachusetts, LLC*, Cases 01-CA-123082, -126843 (Dec. 31, 2014).